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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/499,693	02/08/00	LEE	I 00120/P-4858

HM12/0329  
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EXAMINER

WELLS, L

ART UNIT	PAPER NUMBER
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1619

DATE MAILED: 03/29/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/499,693

Applicant(s)

LEE ET AL.

Examiner

Lauren Q Wells

Art Unit

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Claims 1-4 have been presented for examination and will be reviewed on their merits.

#### *Priority*

Acknowledgment is made of applicant's claim for foreign priority based on applications filed in Korea on March 10, 1999 and June 7, 1999. It is noted, however, that applicant has not filed certified copies of the Korean applications as required by 35 U.S.C. 119(b).

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "higher" in claims 1, 3, and 4 is a relative term which renders the claims indefinite. The term "higher" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Claims 1 and 2 are rendered indefinite as a result of the ambiguity between the definition of the weight ratios in the specification and that in the claims—see pages 4 and 5. As written in the claims, the weight ratio appears to be 0.05 linoleic to 7.5 alpha-linolenic fatty acid. As written in the specification, the weight ratio appears to be a range of ratios of linoleic:alpha-linolenic fatty acid from 0.05-7.5.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidl et al. (5,504,072).

Schmidl et al. teach enteral nutritional compositions comprising 4-30% lipid component, 65-80% carbohydrate, and 16-25% protein. The lipid component is disclosed as comprising omega-6 polyunsaturated fatty acids, such as linoleic acid, and omega-3 polyunsaturated fatty acids, such as alpha-linolenic acid. The omega-6 polyunsaturated fatty acid comprises 2-4% of the total calories and the omega-3 polyunsaturated fatty acid comprises 0.2-1% of the total calories, and these levels are disclosed as meeting the nutrient needs of alpha-linolenic acid and linoleic acid. It is disclosed that the composition can be administered orally as a flavored drink. See Col. 3, line 55-Col.4, line 50; Col. 7, line 33-Col. 12, line 37.

Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Igarashi (6,159,507).

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Food compositions comprising 13.1%-31.2% linoleic acid and 6.5-40.3% alpha-linolenic acid are disclosed, see examples 1-9 in reference. See Col. 1, line 16-Col. 3, line 20; Col. 5, line 64-Col. 6, line 52; Col. 7, line 55-Col. 8, line 22; Col. 9, line 40-Col. 18, line 6.


*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana L Dudash can be reached on (703) 308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw  
March 14, 2001

  
DIANA DUDASH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600